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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HENRY GREGG MARTCH and LUKE VANDUYN

Appeal 2017-002201
Application 13/928,305.¹
Technology Center 2100

Before JASON MORGAN, HUNG H. BUI, and ADAM J. PYONIN,
Administrative Patent Judges.

BUI, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–20, which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.²

¹ According to Appellants, EchoStar Technologies L.L.C. is the real party in interest. App. Br. 2.

² Our Decision refers to Appellants' Appeal Brief filed May 10, 2016 ("App. Br."); Reply Brief filed December 1, 2016 ("Reply Br."); Examiner's Answer mailed October 5, 2016 ("Ans."); Final Office Action mailed November 10, 2015 ("Final Act."); and original Specification filed June 26, 2013 ("Spec").

STATEMENT OF THE CASE

Appellants' Invention

Appellants' invention relates to “[a] remote control system” shown in Figure 1, including “a plurality of buttons arranged in a grid pattern that correspond to user selectable options displayed on a display screen arranged in the same grid pattern.” Abstract.

Appellants' Figure 1 shows remote control 12 provided with buttons 20 arranged in grid pattern 22, as reproduced below with additional markings, in red, for illustration:

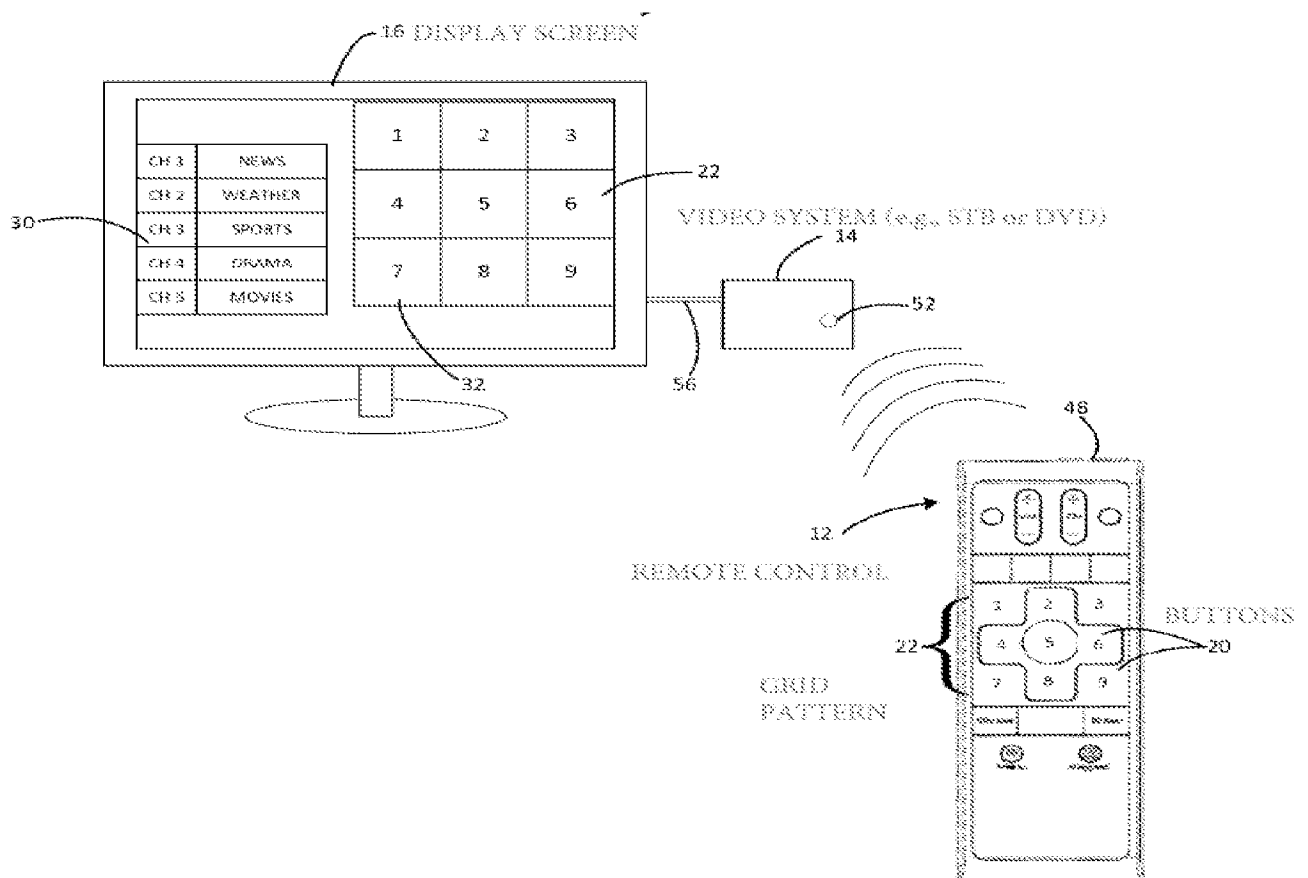


FIG. 1

Appellants' Figure 1 shows remote control 12 provided with buttons 20 arranged in grid pattern 22.

Claims 1, 6, 10, 14, and 18 are independent. Claim 1 is illustrative of Appellants' invention, as reproduced below with a disputed limitation in *italics*:

1. A video device, comprising:
a controller coupleable to a display screen;
a memory coupled to the controller;
a user interface stored on the memory and configured to be output to the display screen;
a menu stored on the memory and displayable on the user interface, the menu including a plurality of user selectable options arranged in a grid pattern;
and
a receiver coupled to the controller and configured to receive wireless signals from a remote control, *the remote control including a plurality of buttons configured in a same grid pattern as the plurality of user selectable options and each button of the plurality of buttons corresponding to one of the user selectable options, wherein the received wireless signals instruct the controller to select the corresponding one user selectable option in response to a corresponding button of the plurality of buttons being pressed.*

App. Br. 24 (Claims App'x).

Examiner's Rejections and References

(1) Claims 1–5 and 10–18 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Segal et al. (US 6,765,557 B1; issued July 20, 2004; “Segal”). Final Act. 2–8.

(2) Claims 6, 7, and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Segal and Vassigh et al. (US 2008/0126975 A1; published May 29, 2008; “Vassigh”). Final Act. 8–10.

(3) Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Segal, Vassigh, and Grier (US 2012/0127375 A1; published May 24, 2012). Final Act. 10–11.

(4) Claims 19 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Segal and Grier. Final Act. 11–12.

Issue on Appeal

Based on Appellants’ arguments, the dispositive issue on appeal is whether Segal discloses the disputed limitation:

the remote control including a plurality of buttons configured in a same grid pattern as the plurality of user selectable options and each button of the plurality of buttons corresponding to one of the user selectable options, wherein the received wireless signals instruct the controller to select the corresponding one user selectable option in response to a corresponding button of the plurality of buttons being pressed[,]

as recited in independent claim 1 and similarly recited in claims 6, 10, 14, and 18. App. Br. 13–21; *see also* Reply Br. 2–10.

ANALYSIS

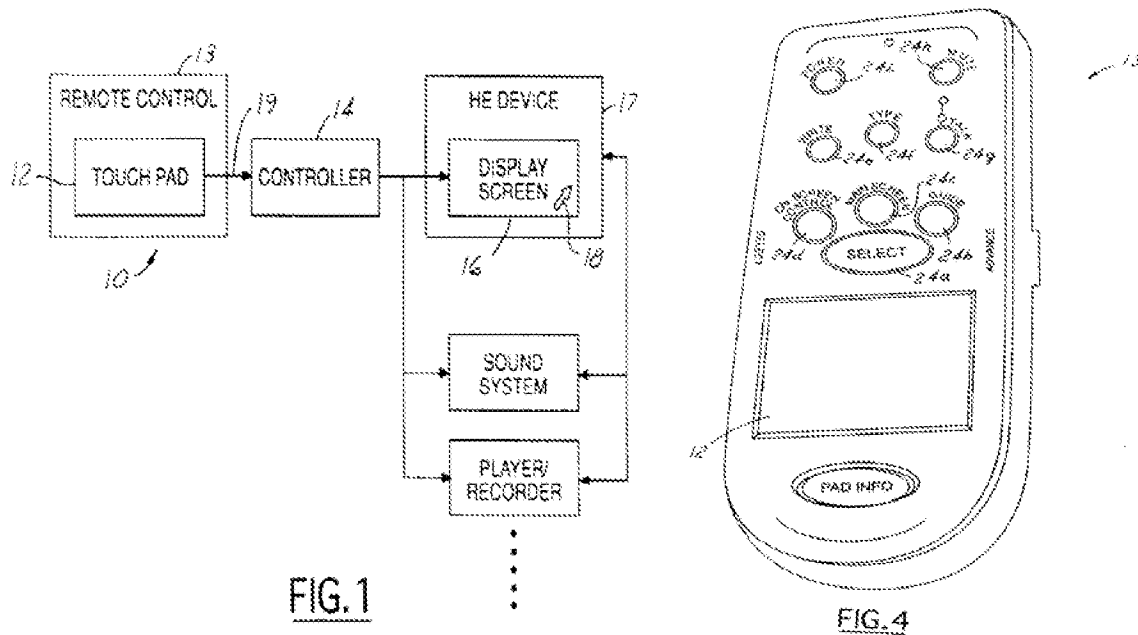
35 U.S.C. § 102(b): Claims 1–5 and 10–18

In support of the anticipation rejection of independent claim 1, the Examiner finds Segal discloses a video device equipped with all the claimed components, including a:

remote control including a plurality of buttons configured in a same grid pattern as the plurality of user selectable options and each button of the plurality of buttons corresponding to one of the user selectable options, wherein the received wireless signals instruct the controller to select the corresponding one user selectable option in response to a corresponding button of the plurality of buttons being pressed

in the form of a touch pad 12 on a remote control 13. App. Br. 24 (Claims App'x); *see also* Final Act. 2–4 (citing Segal, Figures 1, 5A, 7A–7B, and 19).

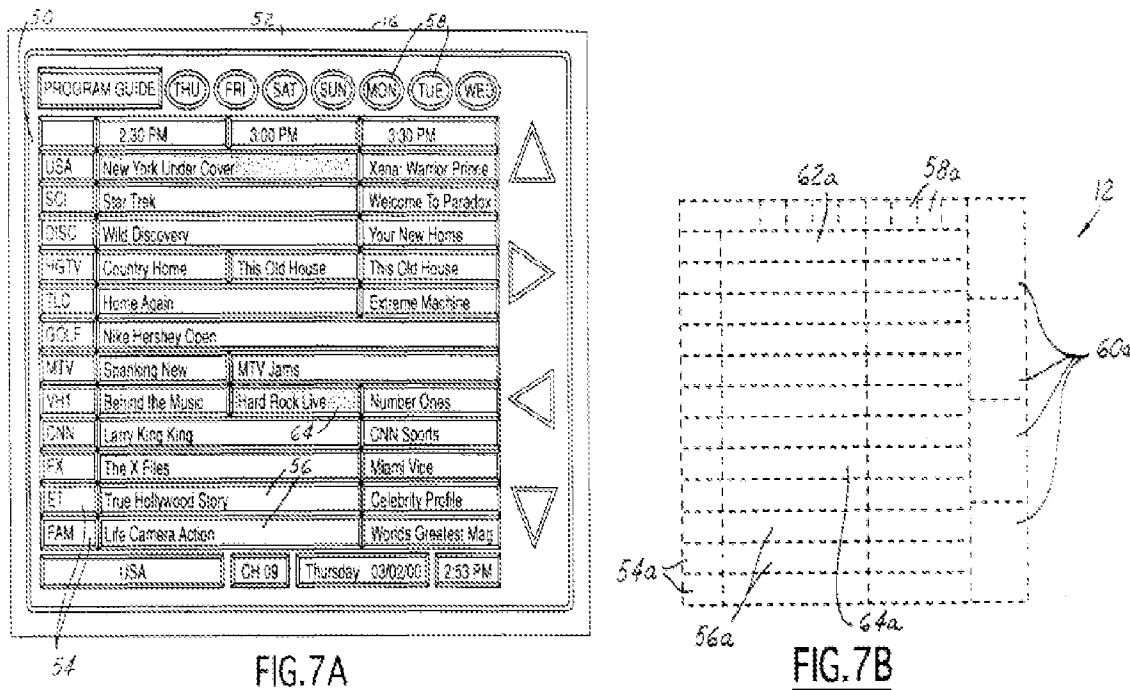
Segal's Figures 1 and 4 show a remote control system 10 including a touch pad 12 on a remote control 13, a controller 14, and a display screen 16 on a video device 17, as reproduced below:



Segal's Figure 1 shows a remote control system 10 including a touch pad 12 on a remote control 13, a controller 14, and a display screen 16 on a video device 17, while Segal's Figure 4 shows a remote control 13 having a touch pad 12 and separate buttons 24a–24h.

According to Segal, “touch pad 12 is operable with display screen 16 such that the area of the touch pad [12] is absolutely mapped to the area of the display screen [shown in Figures 7A–7B].” Segal 4:28–30. “This allows the operator the manipulate touch pad 12 to select control function entries of the panels and menus display on display screen 16 while remaining visually focused on the display screen [16].” Segal 4:39–44.

Segal's Figures 7A–7B show (1) display screen 16 of video device 17 displaying an electronic program guide (EPG) and (2) virtual control areas of touch pad 12 corresponding to grid areas of the EPG displayed on display screen 16, as reproduced below:



Segal's Figure 7A shows display screen 16 of video device 17 displaying an electronic program guide (EPG), while Figure 7B show virtual control areas of touch pad 12 corresponding to grid areas of the EPG displayed on display screen 16.

Appellants acknowledge Segal teaches a touchpad 12 on a remote control 13, shown in Figures 1 and 4, and that touchpad 12 is divided into grids in a grid like pattern. App. Br. 14–15. However, Appellants contend Segal's touchpad is not and cannot be considered the same as “buttons” and, as such, does not include “a *plurality of buttons* configured in a *same grid pattern as the plurality of user selectable options* and each button *of the plurality of buttons* corresponding to one of the user selectable options” in

the manner recited in claim 1. App. Br. 15. In addition, Appellants argue (1) the distinction between Segal's touch pad and Appellants' claimed "buttons" and (2) "Segal even distinguishes between the touchpad and the buttons, which are two different things physically and perform different functions," i.e.,

[t]he touchpad of Segal is used to highlight the item on the display screen and then a button is pressed to select the item[,]

whereas:

[t]he buttons of Segal, including the "Select" button 24a shown in Figure 4 that is pressed to select the highlighted item on the screen are not "configured in a same grid pattern as the plurality of user selectable options and each button of the plurality of buttons corresponding to one of the user selectable options" as required by claim 1.

App. Br. 15 (citing Segal 6:58–7:5, Fig. 4)

In response, the Examiner takes the position that Segal's touch pad 12, shown in Figure 7B, can be considered as "software buttons." Ans. 4. According to the Examiner,

software buttons are well known in the art and they emulate and preform the same functionality as a hardware or physical button but is ran through software. However, a software button is still a button and without clarity as to the constitution of the button.

...

The concept of a button being a software button would have inherent and well known to anyone of ordinary skill at the time of the invention as software buttons are used virtually everywhere - whether they be touchscreens or mouse/keyboard based operating systems. As such, the Examiner believes that the claimed limitations have been disclosed by Segal.

Ans. 4–5.

We are persuaded by Appellants' arguments and disagree with the Examiner's position. Anticipation under 35 U.S.C. § 102 is a question of fact. *Brown v. 3M*, 265 F.3d 1349, 1351 (Fed. Cir. 2001). A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros., Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). During examination, claim terms (not prior art term) are given their broadest reasonable interpretation (BRI) consistent with the specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). However, "the proper BRI construction is not just the broadest construction, but rather the broadest *reasonable* construction *in light of the specification*." *In re Man Mach. Interface Techs. LLC*, No. 2015-1562, 2016 WL 1567181, at *3 (Fed. Cir. 2016) (citing *Microsoft Corp. v. Proxyconn, Inc.*, 789 F.3d 1292, 1298 (Fed. Cir. 2015)) ("A construction that is 'unreasonably broad' and which does not 'reasonably reflect the plain language and disclosure' will not pass muster.").

Contrary to the Examiner's position, the term "remote control including a plurality of buttons configured in a same grid pattern" is described by Appellants' Specification as physical buttons 20 arranged in a grid pattern 22 on the remote control 12, shown in Figures 1, 4, and 7. App. Br. 24 (Claims App'x); *see also* Spec. 4:5–19. Each of these buttons 20 is viewed for corresponding user selectable option 32 highlight on display screen 16 and depressed (selected) by a user via a finger. Spec. 7:19–8:22, 9:5–14. When viewed in light of Appellants' Specification, the claimed "buttons" cannot be broadly but reasonably interpreted to encompass Segal's touch pad 12 to the exclusion of Segal's disclosure of separate "buttons"

24a–24h, shown in Segal’s Figures 4 and 19. This is because Segal’s touch pad is not “software buttons” or “hardware buttons.” As recognized by Appellants, Segal’s touch pad does not have any buttons, whether hardware or software, or any graphical representations of any buttons. Reply Br. 2–3. Rather, Segal’s touch pad and Appellants’ claimed “buttons” are “two different things physically and perform different functions,” that is, “the touchpad 12 of Segal is used to highlight the item on the display screen” whereas “the button (‘button 24a’) on the remote (which is not part of the touch pad), is pressed to *select* the item [on display screen 16].” Reply Br. 4 (citing Segal col. 4:57–61, 6:58–col. 7:5, Figure 4; *see also* Segal Figure 19.

As such, we agree with Appellants that Segal does not teach the disputed limitation:

the remote control including ***a plurality of buttons configured in a same grid pattern as the plurality of user selectable options and each button of the plurality of buttons*** corresponding to one of the user selectable options, wherein the received wireless signals instruct the controller to ***select the corresponding one user selectable option*** in response to a ***corresponding button of the plurality of buttons*** being ***pressed***[,]

as recited in independent claim 1. App. Br. 14–16. Because Segal does not teach the above limitations of claim 1, we decline to sustain the Examiner’s anticipation rejection of claim 1 and its dependent claims 2–5.

Independent claim 10 recites similar limitations of claim 1, and further requires the “buttons . . . to be dual function . . . provide other static functions, including at least one of: play, pause, stop, rewind, fast forward, select, up, down, left, right, search, guide, DVR, clear, menu, and back.” Similarly, independent claims 14 and 18 recite similar limitations of claim 1,

i.e., “a remote control having a plurality of buttons arranged in a same grid pattern as the plurality of user selectable options.”

For the same reasons discussed, we also decline to sustain the Examiner’s anticipation rejection of independent claims 10, 14, and 18 and their respective dependent claims 11–13, 15–17, and 19–20.

35 U.S.C. § 103(a): Claims 6–9

Independent claim 6 is also directed to a remote control and recites, in part: “a plurality of buttons arranged in grid pattern, wherein each button of the plurality of buttons corresponds to one of a plurality of user selectable options displayed by a video device in a same grid pattern as the plurality of buttons.”

Appellants reiterate the same arguments presented against claim 1, that is, Segal does not teach or suggest “a remote control comprising: plurality of buttons arranged in grid pattern, wherein each button of the plurality of buttons corresponds to one of a plurality of user selectable options displayed by a video device in a same grid pattern as the plurality of buttons” as recited in claim 6. App. Br. 22–23.

For the same reasons discussed, we also decline to sustain the Examiner’s obviousness rejection of claims 6–9.

CONCLUSION

On the record before us, we conclude Appellants have demonstrated the Examiner erred in rejecting claims 1–20 under 35 U.S.C. § 102(b) and § 103(a).

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DECISION

As such, we REVERSE the Examiner's final rejection of claims 1–20 under 35 U.S.C. § 102(b) and § 103(a).

REVERSED